IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.1201 OF 1990

Mushic Ahmed Ansari)
Junior Clerk, M.H.Saboo Siddik)
Technical High School & Junior College)
8, Shepherd Road, Bombay 400 008 and)
residing at Room No.14, Ground Floor)
9-A, Bakhar Chawl, 1st Ghelabhai Street)
Bombay 400 008.).. Petitioner

Versus

1) The State of Maharashtra through)
the Ministry of Education)
Mantralaya, Bombay 400 032.)

2) The Deputy Director of Vocational)
Education & Training, Bombay Region)
49, Kherwadi, Bandra (East))
Bombay 400 051.)

3.) The President)
Anjuman-I-Islam, 92, D.N. Road)
Bombay 400 001.)

4) The Head Master)
M.H.Saboo Siddik Technical High)
School & Junior College)
8, Shepherd Road, Bombay 400 008.)

5) (Mrs) Pranati S. Kukade)
Senior Clerk, M.H.Saboo Siddik)
Technical High School & Junior)
College, 8, Shepherd Road)
Bombay 400 008.).. Respondents

Mr.A.N. Maniyar for the Petitioner.

None present for Respondent Nos.1 and 2.

Mr.H.D. Buch for Respondent Nos.3 and 4.

None appears for Respondent No.5.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 25TH AUGUST 2005

ORAL JUDGMENT :

. This Writ Petition challenges the order dated 11th September 1989 of the School Tribunal, Bombay Region, Bombay passed in Appeal No.GEN/32/BOM/12 of 1988. It is the case of the Petitioner that he was appointed as a Junior Clerk on 14th May 1976 on a consolidated pay of Rs.275/- per month. Initially, his appointment was on a leave vacancy and subsequently he was given regular appointment vide letter dated 31st August 1976. He was confirmed in service after a probationary period on 10th July 1978. It appears that in the academic year 1979-80, there was an increase of number of classes in the school and the Deputy Director of Technical Education sanctioned one post of Senior Clerk in the school. The Petitioner claimed that he alone was eligible for being promoted to the post of Senior Clerk as he was the seniormost Junior Clerk. The management of the school advertised for the post, for which the Petitioner also applied. The management then appointed Respondent No.5 as the Senior Clerk pursuant to her selection. Aggrieved by this decision of the management, the Petitioner filed an Appeal before the School Tribunal contending that the recruitment rules do not permit such appointment of Respondent No.5. The Petitioner contended that he had been superseded by the management by appointing Respondent No.5 as a Senior

Clerk with effect from 16th July 1987.

2. The management filed reply to the Appeal filed by the Petitioner under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, hereinafter referred to as "the Act". It was contended in that reply that the appointment having been made prior to 7th August 1987, it could not be challenged before the School Tribunal. The amendment to Section 9 of the Act was brought into force only on 7th August 1987 vesting the Tribunal with the jurisdiction to entertain an appeal in respect of supersession of an employee.

3. The Tribunal upon consideration of the pleadings, held that the seniority could be contested only when there was in fact supersession. Respondent No.5 in the present Petition having been appointed pursuant to an advertisement, could not be considered to have superseded the Petitioner. She was not in service prior to her appointment on 16th July 1987, whereas the Petitioner was working with the management. In these circumstances, the Tribunal rejected the Appeal.

4. In my view, the Tribunal could not be faulted for adopting this approach. Admittedly, the amendment to Section 9 of the Act was effected from 7th August

1987. Supersession of an employee could therefore be challenged before the School Tribunal only after 7th August 1987. Since it was the contention of the Petitioner that he was superseded, the claim of the Petitioner did not lie before the Tribunal before the amendment. Admittedly, the so-called supersession was with effect from 16th July 1987. Therefore, the Tribunal was right in observing that the Petitioner ought to agitate his case else where and not before the School Tribunal.

5. When this Petition was filed, several prayers were sought including that of constitutional validity of the unamended Section 3(2) of the Act. The other prayers are for a direction for considering the legality and propriety of the appointment of Respondent No.5 and to cancel the same by appointing the Petitioner in her place. A prayer has also been sought for payment of arrears of salary and other emoluments. These prayers cannot be granted in the present Writ Petition. The Petitioner may take recourse to whatever remedies he may have to agitate his claim. Writ Petition dismissed. The order of the School Tribunal upheld. Rule discharged. No order as to costs.